

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Allan J. Williams II,**

Plaintiff,

v.

**United Parcel Service, Inc.,** an  
Ohio Corporation.

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act**

Plaintiff Allan J. Williams II ("Plaintiff") complains of United Parcel Service, Inc., an Ohio Corporation ("Defendants"), and alleges as follows:

**PARTIES:**

1. Plaintiff is a disabled individual and a member of a protected class of persons under the Americans with Disabilities Act. Plaintiff is completely deaf and relies entirely on closed captioning to consume audio content such as movies, videos or tutorials.

2. Defendant United Parcel Service, Inc. ("UPS") owned or operated the UPS stores located throughout California, including stores in Los Angeles and San Francisco Counties, in December 2020.

3. Defendant UPS owns or operates the UPS stores located throughout

1 California, including stores in Los Angeles and San Francisco Counties  
2 currently.

3 4. Defendant UPS owned or operated the UPS website, with a root domain  
4 of UPS.com, and all related domains, subdomains and/or content contained  
5 within it, (“Website”) in December 2020.

6 5. Defendant UPS owns or operates the Website currently.

7 6. UPS is a sales establishment or service establishment as understood by  
8 42 U.S.C. § 12181(7)

9 7. Plaintiff does not know the true names of Defendants, their business  
10 capacities, their ownership connection to the property and business, or their  
11 relative responsibilities in causing the access violations herein complained of,  
12 and alleges a joint venture and common enterprise by all such Defendants.  
13 Plaintiff is informed and believes that each of the Defendants herein, is  
14 responsible in some capacity for the events herein alleged, or is a necessary  
15 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
16 the true names, capacities, connections, and responsibilities of the Defendants  
17 are ascertained.

18 **JURISDICTION & VENUE:**

19 8. The Court has subject matter jurisdiction over the action pursuant to 28  
20 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
21 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. (“ADA”)

22 9. This court has supplemental jurisdiction over Plaintiff’s non-federal  
23 claims pursuant to 28 U.S.C. § 1367 because Plaintiff’s Unruh claims are  
24 formed from the same case and/or controversy and are related to Plaintiff’s  
25 ADA claims. A violation of the ADA is a violation of Unruh. (Cal. Code §51(f).

26 10. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b). Defendant  
27 is subject to personal jurisdiction in this District due to its business contacts  
28 with the District.

**FACTUAL ALLEGATIONS:**

11. Plaintiff is deaf and is a member of a protected class under the ADA.

12. Plaintiff relies on subtitles and closed captioning to consume audio in recorded content.

13. UPS operates “brick and mortar” facilities throughout California open to the public, places of accommodation, and business establishments.

14. UPS offers videos on its Website to induce customers to purchase its goods and services and to provide ideas on how to best use them. Websites and videos are some of the facilities, privileges, or advantages offered by Defendants to patrons of UPS.

15. Plaintiff was a prospective customer who wished to access Defendant’s goods and services.

16. Plaintiff specifically was looking for information on how to track packages and shipping protocols.

17. Plaintiff visited the Website in December 2020 to look for information about the company and its products.

18. When Plaintiff attempted to view video content on the Website, he discovered that the videos lacked closed captioning, which made him unable to fully understand and consume the contents of the videos.

19. Plaintiff experienced difficulty and discomfort in attempting to view videos including: “UPS A Collaborative Journey”; “UPS Discover Controlled Substances”; “UPS Learn how to ship a Package”; and “UPS Learn how to Track a Package”. As a result of this inaccessibility he was unable to understand the content and was deterred from further use of the Website.

20. Currently, the Defendants either fail to provide an accessible website or Defendants have failed to maintain in working and useable conditions those website features required to provide ready access to persons with disabilities.

1 21. Despite multiple attempts to access the Website using Plaintiff's  
2 computer, Plaintiff has been denied the full use and enjoyment of the facilities,  
3 goods and services offered by Defendants as a result of the accessibility  
4 barriers.

5 22. Plaintiff personally encountered accessibility barriers and has actual  
6 knowledge of them.

7 23. By failing to provide an accessible website, the defendants denied  
8 Plaintiff full and equal access to the facilities privileges or advantages offered  
9 to their customers.

10 24. Plaintiff has been deterred from returning to the website as a result of  
11 these prior experiences.

12 25. The failure to provide accessible facilities created difficulty and  
13 discomfort for the Plaintiff.

14 26. If the Website had been constructed equally accessible to all individuals,  
15 Plaintiff would have been able to navigate the website and avail himself of its  
16 goods and/or services.

17 27. Additionally, Plaintiff is a tester in this litigation and seeks future  
18 compliance with all federal and state laws. Plaintiff will return to the Website  
19 to avail himself of its goods and/or services and to determine compliance with  
20 the disability access laws once it is represented to him that the UPS and  
21 Website are accessible.

22 28. Plaintiff is currently deterred from doing so because of Plaintiff's  
23 knowledge of the existing barriers and uncertainty about the existence of yet  
24 other barriers on the Website. If the barriers are not removed, Plaintiff will  
25 face unlawful and discriminatory barriers again.

26 29. The barriers identified above violate easily accessible, well-established  
27 industry standard guidelines for making digital content accessible to people  
28 with hearing-impairments to access websites. Given the prevalence of

1 websites that have implemented these standards and created accessible digital  
2 content, it is readily achievable to construct an accessible website without  
3 undue burden on UPS or a fundamental alteration of the purpose of the  
4 Website.

5 30. Compliance with W3C Web Content Accessibility Guidelines  
6 (“WCAG”) 2.0 AA standards are a viable remedy for these deficiencies and a  
7 standard that has been adopted by California courts for website accessibility.

8 31. It’s been established that failure to remove inaccessible website  
9 conditions violates the ADA and California law and requiring compliance with  
10 industry access standards is a remedy available to the plaintiff.

11 32. The website content was intentionally designed, and based on  
12 information and belief, it is the Defendants’ policy and practice to deny  
13 Plaintiff access to the website, and as a result, deny the goods and services that  
14 are otherwise available to patrons of UPS.

15 33. Due to the failure to construct and operate the website in line with  
16 industry standards, Plaintiff has been denied equal access to Defendant’s  
17 stores and the various goods, services, privileges, opportunities and benefits  
18 offered to the public by UPS.

19 34. Closed captioning can be provided at little cost, sometimes free or mere  
20 dollars per minute of video content.

21 35. Given the nature of the barriers and violations alleged herein, the  
22 plaintiff alleges, on information and belief, that there are other violations and  
23 barriers on the Website that relate to his disability. In addition to the barriers  
24 he personally encountered, Plaintiff intends to seek removal of all barriers on  
25 the Website that relate to his disability. See *Doran v. 7-Eleven* (9th Cir. 2008)  
26 524 F.3d 1034 (holding that once a plaintiff encounters one barrier, they can  
27 sue to have all barriers that relate to their disability removed regardless of  
28 whether they personally encountered the barrier).

36. Plaintiff will amend the complaint, to provide further notice regarding the scope of the additional demanded remediation in the event additional barriers are uncovered through discovery. However, please be on notice that the plaintiff seeks to have all barriers related to his disability remedied.

**I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

37. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. Defendant is a public accommodation with the definition of Title III of the ADA, 42 USC § 12181.

38. The website provided by the Defendant is a service, privilege or advantage of Defendant's public accommodations.

39. When a business provides services such as a website, it must provide an accessible website.

40. Here, access to an accessible website has not been provided. A failure to provide an accessible website is unlawful discrimination against persons with disabilities.

41. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. *See*: 42 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows: "A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii)."

1       42. Here, the failure to ensure that the accessible facilities were available  
2 and ready to be used by the plaintiff is a violation of the law.

3       43. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights  
4 set forth and incorporated therein, Plaintiff requests relief as set forth below.

5       **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
6       **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
7 Code § 51-53.)

8       44. Plaintiff repleads and incorporates by reference, as if fully set forth  
9 again herein, the allegations contained in all prior paragraphs of this  
10 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
11 that persons with disabilities are entitled to full and equal accommodations,  
12 advantages, facilities, privileges, or services in all business establishment of  
13 every kind whatsoever within the jurisdiction of the State of California. Cal.  
14 Civ. Code §51(b).

15       45. The Unruh Act provides that a violation of the ADA is a violation of the  
16 Unruh Act. *Cal. Civ. Code* § 51(f).

17       46. Defendants’ acts and omissions, as herein alleged, have violated the  
18 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
19 rights to full and equal use of the accommodations, advantages, facilities,  
20 privileges, or services offered.

21       47. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
22 discomfort or embarrassment for the plaintiff, the defendants are also each  
23 responsible for statutory damages, i.e., a civil penalty. *Cal. Civ. Code* §  
24 55.56(a)-(c).

25       48. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights  
26 set forth and incorporated therein, Plaintiff requests relief as set forth below.  
27  
28

**PRAYER:**

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. A Declaratory Judgment that at the commencement of this action Defendants were in violation of the requirements of the ADA due to Defendants' failures to take action to ensure that its websites were fully accessible to and independently usable by hearing-impaired individuals, including providing closed-captioning on all video content containing audio elements.

2. Pursuant to 42 U.S.C § 12181, a preliminary and permanent injunction enjoining Defendants from violating the ADA with respect to its website, including a requirement that all current and future audio-video content be closed captioned at the time of upload.

3. Damages under the Unruh Civil Rights Act § 51<sup>1</sup>, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and *Cal. Civ. Code* § 52.

Dated: January 11, 2021

CENTER FOR DISABILITY ACCESS



By: \_\_\_\_\_

Russell Handy, Esq.  
Attorney for Plaintiff

<sup>1</sup> Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.